IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3925 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MOTIBHAI BALUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3925 of 2002

MR ANIL DAVE for Petitioner

MR HH PATEL, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/07/2002

ORAL JUDGEMENT

1. Heard the learned counsel Mr.Anil Dave for the petitioner and the learned AGP Mr.HH Patel.

2. The petitioner-detenu has challenged the legality and validity of the order of detention dated 24th February, 2002 by invoking jurisdiction of this Court under Article 226 of the Constitution of India. The detenu is branded as a chronic bootlegger involved in offence punishable under the Bombay Prohibition Act and is also branded as a 'dangerous person' within the meaning of Section 2(b) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

3. The order is challenged on number of grounds by the petitioner-detenu. However, the counsel appearing for the petitioner Mr.Anil Dave has concentrated his argument Authority was not supplied with all the relevant vital documents at the time on two main points. The first point is that the Detaining Authority was not supplied with all the relevant vital documents at the time when the subjective satisfaction was allegedly recorded, and the second point is that the petitioner was not supplied with important/vital documents mentioned and referred or say relevant to the detention though demanded specifically by way of written representation dated 11th March, 2002. The representation sent to the Deputy Secretary, Home Department through the Jail Superintendent, Central Jail, Ahmedabad is on record (page 95). It is not disputed by learned AGP that this representation was received by the competent Authority. On the contrary, it is submitted that appropriate steps were taken by the Deputy Secretary and the copy of this representation was sent to the Police Commissioner so that he can comply with the demand. The say of the Police Commissioner in the present case is that the FSL reports in all four cases were not supplied to the detenu as the Detaining Authority had not placed reliance on these reports. Indirectly he has justified the action of non-supply of these documents to the detenu. It is submitted by Mr.Dave that this stand taken by the respondent State and the Police Commissioner has prevented the detenu in making effective representation against the legality and validity of the order of detention and/or the continued detention of the detenu. Mr.Dave has placed reliance on one of the decisions of this Court in case of RAMESH @ BHANGARI BABAJI THAKOR (ZALA) v/s. STATE OF GUJARAT & ORS. reported in 2000(2) GLR 1777. In the cited case, the State Government had directed the Detaining Authority to supply all FSL reports to the detenu. The petitioner-detenu, in the cited case was found involved in the offence punishable under the Bombay Prohibition Act and indulged in the activities related to selling and storing the

countery-made liquor. The present detenu is also detained for the similar case. Of course, in the present case, there is no specific direction to the Police Commissioner to supply the FSL report. But, in view of the penal procedure and the procedure prescribed under the Bombay Prohibiton Act and the rules framed thereunder, this Court can not deny the FSL report would be a vital document and relevant to secure a conviction or even to proceed with the accused for the offence punishable under that Act. When undisputedly the liquid seized by the police was sent to the Laboratory for test, the respondent State should not have played any hide and seek game when the petitioner had prayed specifically to provide the copies of FSL report. It is rightly argued that such important/vital documents are required to be placed otherwise the order of detention can be said to have been passed without proper application of mind. Even, for the sake of argument it is accepted that in all cases it would be difficult for the Detaining Authority to have the Laboratory report while exercising powers under Section 3, because he is bound to exercise powers which may have effect and with a view to prevent the violation of law, to see that the public order is not disturbed he may pass appropriate orders but, he has to secure reasons specifically. In such eventuality he is supposed to record reasons in detailed while exercising the powers vested. On perusal of the papers and especially the grounds for detention no such specific reasons have been recorded by the Authority. In the same way, the FSL report in all four cases were not supplied to the detenu. So, it is also rightly argued that right to make effective representation of the petitioner has been seriously jeopardised.

4. The learned AGP Mr.HH Patel, facing reliance on the decision in case of OSMAN ALI KHATAKI v/s. COMMISSIONER OF POLICE, RAJKOT & ANR. reported in 1994(1) GLH 512 has submitted that the Detaining Authority had not placed reliance on the FSL reports nor the finding recorded by the Laboratory has been referred in the grounds for detention. So, the documents which are not relied by or referred to in the grounds of detention such documents may not be supplied and the order of detention would not render bad or invalid. In the cited case, the detenu had demanded copies of certain panchnamas and statements and he was not found involved in three cases punishable under IPC. The submissions of the counsel appearing for the respondent State in Paragraph 16 and the observations made by the Court in Paragarph 17 of the judgment on the contrary would tilt the balance in favour of the present petitioner. In a

prohibition case, even with a view to proceed with the criminal trial, prima facie evidence should be there on the record to show that the material (liquid) within the meaning of the Bombay Prohibition Act recovered from the possession of the accused is prohibited and therefore the accused of the case be punished as per the scheme/provision of the Act. All cases registered against the present detenu were because of the allegation that he was found in possession of country-made liquor. The report of the Laboratory might not be available when the detention order was passed. But, on perusal of the papers it transpires that the muddamal sent for analysis to the Laboratory had already sent back to the concerned police station and was received by the Investigating Officer. In that situation, unless contrary proved or brought on record that the FSL report or say test finding was not available for perusal and therefore it was not placed bfore the Detaining Authority. On the contrary, the finding recorded by the Apex Court in Kamarunnissa's case referred by the Division Bench in Paragraph 17 of the cited decision if considered it says that the petitioner-detenu is supposed to show that such non-supply of documents has impaired his right to make an effective and purposeful representation. Of course, in the present case, the order of detention was approved by the State Government and ultimately confirmed on the report of the Board. However, it is always open to the detenu to pray for revoke of the order. So, the validity of continued detention can be challenged by effective representation and for that purpose the vital documents are demanded by the present petitioner. There is no affidavit even today before the Court that the findings of the FSL report were positive in all four cases. It is very well settled that no hard and fast rule can be laid down in this regard and what is essential is that the detenu is supposed to show that the failure to supply the documents has affected adversely to his right to make effective representation. In the present case, the detenu has satisfactorily established this aspect and therefore the continued detention on account of evasive reply given by the Police Commissioner is found invalid.

5. For short, the petition is allowed. The impugned order of detention dated 24th February, 2002 passed by the Police Commissioner, Surat City against the detenu is held invalid and is hereby quashed and set aside. The detenu Smt.Bhikhiben W/o. Motibhai Balubhai is ordered to be set at liberty forthwith if she is not required to be detained in any other case. Rule is made absolute accordingly. Direct service is permitted.

(C.K. Buch, J.)

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